

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
and Jon Wellingshoff.

Midwest Independent Transmission System
Operator, Inc.

Docket Nos. ER06-321-003
ER06-321-004

ORDER DENYING CLARIFICATION AND REHEARING, CONDITIONALLY
ACCEPTING COMPLIANCE FILING AND DIRECTING FURTHER COMPLIANCE
FILING

(Issued October 12, 2006)

I. Introduction

1. In this order we deny the motion for clarification and alternative request for rehearing of the order issued in *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,174 (2006) (May 12 Order). In addition, we conditionally accept the compliance filing and direct a further compliance filing.

II. Background

2. On December 14, 2005, Midwest Independent Transmission System Operator, Inc. (Midwest ISO), the Midwest ISO Transmission Owners,¹ Michigan Electric

¹ The Midwest ISO Transmission Owners for this proceeding consist of: Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; American Transmission Systems, Incorporated, a subsidiary of FirstEnergy Corp.; Cinergy Services, Inc. (for Cincinnati Gas & Electric Co., PSI Energy, Inc., and Union Light Heat & Power Co.); City of Columbia Water and Light Department (Columbia, MO); City Water, Light & Power (Springfield, IL); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; LG&E Energy Corporation (for Louisville Gas and Electric Co. and Kentucky Utilities Co.); Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin (continued...)

Transmission Company, LLC, International Transmission Company, WPS Resources Corporation, Wisconsin Electric Power Company, and Duke Energy Vermillion LLC (Filing Parties) submitted for filing revisions to Module D of Midwest ISO's Open Access Transmission and Energy Markets Tariff (TEMT). The Midwest ISO Transmission Owners proposed to revise Module D by deleting provisions that govern the relationship of the Midwest ISO's Independent Market Monitor (IMM) and the Midwest ISO's Balancing Authorities. In place of the deleted provisions, the Midwest ISO Transmission Owners proposed an agreement that sets forth the relationship of the IMM and the Balancing Authorities (IMM-BA Agreement).

3. In the May 12 Order, the Commission conditionally accepted certain proposed revisions to Midwest ISO's TEMT. It also conditionally accepted for filing the IMM-BA Agreement, subject to further modifications to the TEMT and the IMM-BA Agreement.

III. Clarification/Rehearing Request

4. On June 12, 2006 the Midwest ISO Transmission Owners filed a request for clarification and in the alternative, a request for rehearing of the May 12 Order. They seek clarification of the certain language in paragraph 50 which states:

The Filing Parties may include language [in the IMM-BA Agreement] that states that the IMM will notify the subject Balancing Authority that its conduct is being referred to the Commission. That notice may contain a general specification of the questionable behavior (*e.g.* manipulation of ACE levels during a specified period).

5. The Midwest ISO Transmission Owners ask the Commission to clarify that the IMM should provide a general specification of the questionable behavior to the Balancing Authority sufficiently in advance of any Commission filing, to allow the Balancing Authority to raise facts which indicate that any such report may be based on a misunderstanding or inaccurate facts.²

Electric Company; Otter Tail Corporation d/b/a Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wabash Valley Power Association, Inc.

² Clarification/Rehearing Request at p. 2.

IV. Compliance Filing

6. On June 13, 2006, the Filing Parties submitted a compliance filing.³ Notice of the June 13 filing was published in the *Federal Register*, 71 Fed. Reg. 37,063 (2006), with interventions and protests due on or before July 5, 2006. None were filed.

V. Discussion

A. Request for Clarification/Rehearing

7. The Midwest ISO Transmission Owners request clarification as to when the IMM must notify a Balancing Authority that it is going to refer potentially anticompetitive behavior to the Commission. The Midwest ISO Transmission Owners state that the parties negotiated section 4.4⁴ of the IMM-BA Agreement with the intent of providing advance notice to the Balancing Authority to obviate misunderstandings and prevent unwarranted referrals to the Commission. The Midwest ISO Transmission Owners suggest that the Commission should require the IMM to “provide a . . . general specification of questionable behavior to the Balancing Authority prior to reporting the behavior to the Commission, sufficiently in advance to allow errors to be corrected.”⁵

8. Alternatively, the Midwest ISO Transmission Owners argue that if general advance notice is not required by the May 12 Order, it should be. In this event, the Midwest ISO Transmission Owners request that the Commission grant rehearing because general advance notice concerning questionable Balancing Authority behavior would reduce misunderstandings or the misinterpretation of data. The Midwest ISO Transmission Owners assert that advance notice to the Balancing Authority would reduce the referral of matters where there is no improper behavior but would necessitate expenditure of Commission resources, as well as those of the Balancing Authority.

9. We will not grant the clarification request or the alternative rehearing request. The IMM-BA Agreement requires the IMM to “(i) notify the Balancing Authority and provide a description of the actions to be assessed in writing, and (ii) commence an assessment of the Balancing Authority’s actions.”⁶ Additionally, “[t]he IMM shall

³ The compliance filing was submitted one day late along with a motion to make the untimely filing.

⁴ The changes required by the May 12 Order necessitated the renumbering of subsections in section 4 of the IMM-BA Agreement. Therefore, the previous section 4.5 is now new section 4.4. Clarification/Rehearing Request at p. 4, fn6.

⁵ *Id.* at p. 4.

⁶ IMM-BA Agreement section 4.4.

communicate with the Balancing Authority during such an assessment... to attempt to resolve disagreements, ambiguities or confusion that arise during the assessment.”⁷ We find that this procedure gives sufficient advance notice to the Balancing Authority that the IMM is looking into the Balancing Authority’s actions prior to notifying the Commission of the questionable behavior. The IMM’s request for the Balancing Authority’s written description of the questionable actions constitutes advance notice that the IMM is concerned about the Balancing Authority’s behavior. Thus, the Balancing Authority has an opportunity to “resolve disagreements, ambiguities or confusion” and forestall referral to the Commission. Therefore we find that the IMM need not give additional formal advance notice to the Balancing Authority before the matter is referred to the Commission.

B. Compliance Filing

10. The May 12 Order directed Midwest ISO to make a compliance filing modified certain proposed revisions to the TEMT. With regards to Midwest ISO’s TEMT proposals, the May 12 Order directed Midwest ISO to: (1) retain language in the TEMT that commits the IMM to monitor, report, and refer questionable practices to the Commission for enforcement (May 12 Order at P 25); (2) maintain the language of TEMT sections 50.1, 50.3, and 53.3.b without modification (*Id.* at P 26); (3) revise the proposed section 53.1.g consistent with Commission precedent (*Id.* at P 27); (4) modify TEMT Module D to state that additional details are specified in the IMM-BA Agreement or successor agreement (*Id.* at P 28); and (5) modify TEMT Module D to add the definition of the IMM-BA Agreement to the Definitions section (*Id.*).

11. The May 12 Order also directed Midwest ISO to make certain changes to the proposed IMM-BA Agreement. The May 12 Order directed Midwest ISO to: (1) delete the last sentence in proposed section 10.3 that prematurely addressed the exercise of Commission jurisdiction (May 12 Order at P 31); (2) delete section 4.2 (*Id.* at P 37); (3) revise the IMM-BA Agreement to include the terms “ERO” and “regional entities” in sections where “NERC” and “local reliability councils/coordinators” are used (*Id.*); (4) modify proposed sections 4.1 and 4.5 of the IMM-BA Agreement so that the IMM also monitors for anti-competitive behavior (*Id.* at P 48); (5) modify proposed section 4.3 clarifying that the listed items are each to be monitored for, and not as a condition for assessing the occurrence of prohibited behavior (*Id.*); (6) modify proposed section 4.5 so that the proposed threshold is applied only to harmful market impacts to Midwest ISO customers (*Id.* at P 49); (7) modify proposed section 4.5 to indicate that all prohibited acts are to be reported to the Commission (*Id.*); (8) remove language from proposed section 4.5 of the IMM-BA Agreement that provides for information on the IMM’s assessment be provided to the subject Balancing Authority (*Id.* at P 50); (9) change the

⁷ *Id.*

data or information retention period to five years in section 5.1.1 (*Id.* at P 57); and (10) delete ambiguous language proposed in section 6.2 and replace the language specified in the order (*Id.* at P 62-63).

12. We find that Midwest ISO's compliance filing contains the required changes and generally complies with the Commission's directions in the May 12 Order. Accordingly, we will conditionally accept them subject to Midwest ISO filing another compliance filing to address the concern described below.

13. In addition to the required changes, the compliance filing contains one change that is acceptable as a ministerial change.⁸ The compliance filing also contains one change that goes beyond the scope of the May 12 Order. On proposed Sheet No. 713, Midwest ISO proposes the following language:

With regard to the IMM's monitoring of Control Area Operations, details regarding such monitoring are specified in the IMM-BAA. **To the extent a conflict arises (or an argument creating a conflict) between a provision or provisions of the IMM-BAA and this Module D, the provisions of the IMM-BAA shall govern.**

The text that is not in bold is consistent with the May 12 Order and is accepted for filing. However, the bolded text goes beyond the scope of the Commission's directions in the May 12 Order.⁹ We will therefore reject, without prejudice, the bolded language. Midwest ISO must make a separate filing pursuant to section 205 of the Federal Power Act with the Commission if it wishes to revise its tariff to include this language.

⁸ In addition to the compliance revisions, Midwest ISO revised the Issuing Officer to reflect the name of the new President & Chief Executive Officer ("CEO") Midwest ISO T. Graham Edwards, who replaced James P. Torgerson as CEO in May 2006. Transmittal Letter at pp. 3-5.

⁹ "The Commission has long established that compliance filings must be limited to the specific directives ordered by the Commission. The purpose of a compliance filing is to make the directed changes and the Commission's focus in reviewing them is whether they comply with the Commission's previously stated directives." *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079 at P 60 (2005). *See also*, *Pacific Gas and Electric Company*, 109 FERC ¶ 61,336 at P 5 (2004); *Midwest Independent Transmission System Operator, Inc.*, 99 FERC ¶ 61,302 at 62,264 (2002); *ISO New England, Inc.*, 91 FERC ¶ 61,016 at 61,060 (2000); *Sierra Pacific Power Company*, 80 FERC ¶ 61,376 at 62,271 (1997); *Delmarva Power & Light Company*, 63 FERC ¶ 61,321 at 63,160 (1993).

The Commission orders:

(A) The Midwest ISO Transmission Owners' request for clarification or, in the alternative, rehearing is hereby denied for the reasons stated herein.

(B) Midwest ISO's compliance filing is hereby conditionally accepted for filing and made effective on February 12, 2006, as requested, subject to modification as discussed in the body of this order.

(C) Midwest ISO is hereby directed to make a compliance filing consistent with this order within 30 days of the date of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Magalie R. Salas,
Secretary.